

## **REMARKS/ARGUMENTS**

### **I. Introduction**

- Claims 1, 3-5, 7-13, 15-17, 26 and 31 are pending in the application.
- Claims 1, 12, 13, 16, 26, and 31 are the only independent claims under review.
- Claims 1, 3-5, 7-13, 15-17, and 31 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Vilsmeier et al. (US 6,611,700) in view of Danisch (US 6,127,672), or non patent literature Measureand Inc.
- Independent claims 1, 12, 13, 16, 26, and 31 are currently amended.
- The following comments will be made with reference to the published Patent Application for this case, United States Patent Application Publication No.: US 2002/0087101 A1.

### **II. Amended Claims Overcome Rejections under 35 U.S.C. § 103(a)**

Claims 1, 3-5, 7-13, 15-17, and 31 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Vilsmeier et al. (US 6,611,700) in view of Danisch (US 6,127,672), or non patent literature Measureand Inc.

After reviewing the new prior art made of record by the examiner (non patent literature Measureand Inc.), Applicant realized that an important aspect of the presently disclosed invention may not have been adequately claimed. Mainly, that external curvature data be used to derive a frame of reference for a 3-D internal image set of a patient. This relationship may then be used to assist surgery or therapeutic intervention(s) on the patient.

To explicitly claim this aspect of the invention, independent claims 1, 12, 13, 16, and 26 are currently amended to add the limitation to "relate the curvature of the first non-invasive curvature sensor to; the location of the imageable fiducials; and a 3-D internal image set of the patient." Similarly, independent claim 31 is amended to register "a ~~volumetric image~~ a 3-D internal image set of the body to the means for externally measuring the curvature of a body."

Support for these amendments may be found in paragraphs 56 through 62 of the published application US 2002/0087101 A1 which states:

... patient undergoes an imaging study ... wherein a 3-D internal image set is taken of the portion of the patient's body ... curvature sensor(s) ... fiducials and/or an attachment fixture. The imaging study data set is then processed ... wherein the computer image processor locates the position

of the attachment fixture with respect to the patient's anatomy, the fiducials and, if employed, the curvature sensor garment, and calculates their positions and orientations within the image data set. [T]he attachment fixture is marked on the image data set. ... [T]he computer image processing system obtains the 3-D position information from the curvature sensor ... [t]hen the computer image processing system calculates the position of the attachment fixture relative to the fiducials ... using the known relative positional information of the fiducials to the curvature sensor.

Applicant believes that the claims as amended now overcome the rejections under 35 U.S.C. 103(a). Therefore, Applicant respectfully requests that these rejections be withdrawn.

### **III. Conclusion**

The Commissioner is hereby authorized to charge any additional fees, which may be required, or credit any overpayment, to Deposit Account No. 50-3212.

In the event that an extension of time is required, or may be required in addition to that requested in a petition for an extension for time, the

Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 50-3212.

Respectfully submitted,

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